

DEC 04 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICHARD RAYMOND RUPPERT,

Defendant - Appellant.

No. 03-10126

D.C. No. CR-01-00242-LRH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Submitted September 12, 2003**

Before: SKOPIL, FERGUSON, and BOOCHEVER, Circuit Judges.

Richard Raymond Ruppert appeals from his sentence following his guilty plea to one count of wire fraud in violation of 18 U.S.C. § 1343, challenging the

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

district court's imposition of a two-level increase for obstruction of justice and the amount of restitution. We have jurisdiction under 28 U.S.C. § 1291, and we affirm the increase for obstruction of justice and remand for a recalculation of the restitution amount.

The district court did not clearly err in finding that Ruppert obstructed justice under U.S.S.G. § 3C1.1. See United States v. Jimenez, 300 F.3d 1166, 1170 (9th Cir. 2002). Ruppert willfully provided materially false information to the judge and pretrial services about his car (which secured his bond), his unapproved travel, and his failure to attend the victims' depositions. There is no requirement that actual obstruction have occurred when material false statements are made to pretrial services officers. See United States v. Mangana-Guerrero, 80 F.3d 398, 400-01 (9th Cir. 1996).

Further, it was not error to order restitution in the full amount of the victims' financial loss, because Ruppert had yet to pay anything to the victims despite the outstanding civil judgment in state court. Any amount that he subsequently does pay will be offset against the restitution order. See 18 U.S.C. § 3664(j)(2)(B). The government concedes that the restitution amount should be offset by the amounts Ruppert paid to the victims as "lulling" payments. We remand for the recalculation of the restitution amount, reduced by any amounts

actually paid to the victims to lull them into believing the investment plan was genuine.

AFFIRMED IN PART AND REMANDED IN PART.